

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Daniel R. Baird,

Civil No. 11-1323 (DWF/LIB)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Burlington Northern Santa Fe,

Defendant.

Daniel R. Baird, *Pro Se*, Plaintiff.

Diane P. Gerth, Esq., and Rodney A. Honkanen, Esq., Ricke & Sweeney, PA, counsel for Defendant.

This matter is before the Court upon Plaintiff Daniel R. Baird's ("Plaintiff") objections (Doc. No. 66) to Magistrate Judge Leo I. Brisbois's October 13, 2011 Report and Recommendation (Doc. No. 65) insofar as it recommends that Plaintiff's Motions for Default Judgment be denied. Defendant Burlington Northern Santa Fe ("Defendant") filed a response to Plaintiff's objections on November 4, 2011. (Doc. No. 72.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

The Court has carefully reviewed the record and concludes that Plaintiff's objections offer no basis for departure from the Report and Recommendation. In particular, Plaintiff appears to dispute the Magistrate Judge's conclusion that Defendant has not "failed to plead or otherwise defend" as required to enter a party's default. Fed. R. Civ. P. 55(a). As further noted by Magistrate Judge Brisbois, a motion for default judgment must be preceded by entry of default by the Clerk of Court. *See Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998). On July 1, 2011, the Clerk of Court denied Plaintiff's request for default. (Doc. No. 7.) Plaintiff has failed to demonstrate that he is entitled to default judgment. Consequently, Plaintiff's motions are properly denied.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Daniel R. Baird's objections (Doc. No. [66]) to Magistrate Judge Leo I. Brisbois's October 13, 2011 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Leo I. Brisbois's October 13, 2011 Report and Recommendation (Doc. No. [65]) is **ADOPTED**.

3. Plaintiff's Motions for Default Judgment (Doc. Nos. [8] and [31]) are
DENIED.

Dated: November 21, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge